

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

United States of America,	)	CRIMINAL NO. 0:11-520
	)	
v.	)	<b>OPINION and ORDER</b>
	)	
Tracey Douglas,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the court on Defendant's *pro se* motion to vacate pursuant to 28 U.S.C. § 2255. ECF No. 338. The Government has filed a response in opposition and a motion to dismiss. ECF Nos. 341, 342. Defendant filed a response on January 23, 2017. ECF No. 348. Defendant also filed a "*pro se* motion to amend and appointment of counsel" the same day. ECF No. 349.

Defendant filed a prior motion for relief pursuant to § 2255 on November 19, 2012. ECF No. 259. After full briefing, this court granted a motion for summary judgment by the Government and dismissed Defendant's motion. ECF No. 280.

The current motion is a second or successive motion for relief under 28 U.S.C. § 2255. Defendant's failure to seek permission to file a second or successive motion in the appropriate court of appeals prior to the filing of the motion in the district court is fatal to the outcome of any action on the motion in this court. Prior to filing a second or successive motion under § 2255, Defendant must obtain certification by a panel of the Fourth Circuit Court of Appeals allowing him to file a second or successive motion. As provided in 28 U.S.C. § 2244, "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the

application.” 28 U.S.C. § 2244(b)(3)(A). *See also* Rule 9 of the Rules Governing 2255 Proceedings (“Before presenting a second or successive motion, the moving party must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion . . .”). Defendant has not received an order from the Fourth Circuit authorizing filing of a successive § 2255.

The requirement of petitioning a court of appeals (in this instance, the Fourth Circuit) for permission to file a second or successive § 2255 motion is jurisdictional. Therefore, Defendant’s failure to receive permission from the Fourth Circuit Court of Appeals prior to filing this § 2255 motion is fatal to any action in this court. This motion is dismissed as this court is without jurisdiction to consider it. Defendant’s “*pro se* motion to amend and appointment of counsel” (ECF No. 349) is moot.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
Senior United States District Judge

Columbia, South Carolina  
January 25, 2017